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09/652,927	08/31/2000	Theodore W. Meyers		4367

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EXAMINER

LUGO, CARLOS

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/652,927
Filing Date: August 31, 2000
Appellant(s): MEYERS, THEODORE W.

Jeremy Kriegel
For Appellant

EXAMINER'S ANSWER

1. This is in response to the appeal brief filed June 16, 2006 appealing from the Office action mailed June 8, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

9001,545	MORRISON	10-1908
3,633,943	RAMM	1-1972
4,690,632	CARROW	9-1987
1,052,198	WYRE	2-1913
4,798,028	PINION	1-1989

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1,4,6 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 901,545 to Morrison in view of US Pat No 4,690,632 to Carrow.

Regarding claim 1, Morrison discloses a tee (16) comprising a cylindrical main body portion (a) defining a tubular opening adapted to receive a filter.

A cylindrical uppermost hub (above where a⁵ is pointing in Figure 7) is coaxially with the cylindrical main body portion. The uppermost hub includes an inner diameter greater than the diameter of the cylindrical main body portion.

An inlet/outlet port (a³) is in communication with the tubular opening. The inlet/outlet port includes an inlet/outlet hub (26), located at an open end of the port, having a diameter sized to receive a pipe. The diameter of the inlet/outlet hub is greater than the diameter of the cylindrical main body portion. The inlet/outlet port is adaptable to receive a pipe (Figure 1).

However, Morrison fails to disclose that the tee is made of an injection molded plastic. Morrison discloses that the tee is made of metal.

Carrow teaches that it is well known in the art that in recent years, injection-molding plastic is used to produce tubular articles, such as pipes and pipe-fittings.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to produce the tee presented by Morrison of an injection molding plastic, as taught by Carrow, since the selection of a known material based upon its suitability for the intended use is a design consideration within the level of skill of one skilled in the art. Further, it would have been obvious to combine the device presented by Morrison with the teachings of Carrow in order to offer certain advantages over metal pipes or metal pipe-fittings, like corrosion resistance and potentially lower material and production costs.

As to claim 4, Morrison illustrates that the inlet/outlet port includes a sweep portion arcing upwardly from the cylindrical main body portion toward a ring defined by the inlet/outlet hub. The sweep portion defines an opening in communication with the tubular opening and the inlet/outlet hub (Figure 1).

As to claim 6, Morrison discloses the use of a reducer (Figures 1 and 8).

As to claim 19, Morrison illustrates that the outlet opening of the inlet/outlet port is located along a length between the lowermost end and the uppermost hub, but near to the uppermost hub.

Claims 1-5,19,21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,633,943 to Ramm in view of US Pat No 4,690,632 to Carrow.

Regarding claims 1 and 23, Ramm discloses a tee comprising a cylindrical main body portion (2) defining a tubular opening adapted to receive a filter.

A cylindrical uppermost hub (at 22 in Figure 1) is coaxially with the cylindrical main body portion. The uppermost hub includes an inner diameter greater than the diameter of the cylindrical main body portion.

An inlet/outlet port (8) is in communication with the tubular opening. The inlet/outlet port includes an inlet/outlet hub (at 22 near 8), located at an open end of the port, having a diameter sized to receive a pipe. The diameter of the inlet/outlet hub is greater than the diameter of the cylindrical main body portion. The inlet/outlet port is adaptable to receive a pipe (Figure 1).

However, Ramm fails to disclose that the tee is made of an injection molded plastic. Ramm discloses that the tee is made of a resin.

Carrow teaches that it is well known in the art that in recent years, injection-molding plastic is used to produce tubular articles, such as pipes and pipe-fittings.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to produce the tee presented by Ramm of an injection molding plastic, as taught by Carrow, since the selection of a known material based upon its suitability for the intended use is a design consideration within the level of skill of one skilled in the art.

As to claim 3, Ramm illustrates that the device further includes seams (at 22, Figure 2) coextending with the first and second ribs.

As to claim 4, Ramm illustrates that the inlet/outlet port includes a sweep portion arcing upwardly from the cylindrical main body portion toward a ring defined by the

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inlet/outlet hub. The sweep portion defines an opening in communication with the tubular opening and the inlet/outlet hub (Figure 1).

As to claims 2 and 21, Ramm discloses that the first and second ribs (at 22 and 36) extending outwardly from an outer wall of the elongated main body portion and the uppermost hub (Figure 3).

As to claim 19, Ramm illustrates that the outlet opening of the inlet/outlet port is located along a length between the lowermost end and the uppermost hub, but near to the uppermost hub.

Claims 2,15,17,18,21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 901,545 to Morrison in view of US Pat No 4,690,632 to Carrow as applied to claim 1 above, and further in view of US Pat No 1,052,198 to Wyre.

Regarding claims 2,15,21 and 22, Morrison, as modified by Carrow, fails to disclose that the tee includes reinforcing ribs.

Wyre teaches that it is well known in the art to have metal pipes with reinforcing ribs (2 and 4).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate reinforcing ribs, as taught by Wyre, into the tee described by Morrison, as modified by Carrow, in order to strength the pipe fitting.

As to claims 17 and 18, Morrison discloses that a pipe is received within the inlet/outlet port with a reducer bushing.

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Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,633,943 to Ramm in view of US Pat No 4,690,632 to Carrow as applied to claim 1 above, and further in view of US Pat No 901,545 to Morrison.

Ramm, as modified by Carrow, fails to disclose the use of a reducing bushing or reducer in the inlet/outlet port.

Morrison teaches that is known in the art to have a tee adapted to receive a pipe of a first or second outer diameter (by using a reducer as illustrated in Figure 8).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teaching of a device that helps to receive a first or a second outer diameter into the inlet/outlet hub, as taught by Morrison, into a tee as described by Ramm, as modified by Carrow, in order to adapt a bigger and larger filter and to adapt different pipes with different outer diameters.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 901,545 to Morrison in view of US Pat No 4,690,632 to Carrow and US Pat No 1,052,198 to Wyre as applied to claim 15 above, and further in view of US Pat No 4,798,028 to Pinion.

Morrison, as modified by Carrow and Wyre, fails to disclose an efficient filter inside the main body. Morrison device is capable of receiving a filter.

Pinion teaches that it is well known in the art to have a filter (15) located inside a main body (12) of a pipefitting (10).

It would be obvious to one having ordinary skill in the art at the time the invention was made to incorporate into the tee of Morrison, as modified by Carrow and Wyre, a filter, as taught by Pinion, in order to filter the fluid that flows in the pipe system.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 901,545 to Morrison in view of US Pat No 4,690,632 to Carrow as applied to claims 1,4 and 19 above, and further in view of US Pat No 4,798,028 to Pinion.

Morrison, as modified by Carrow, fails to disclose an efficient filter inside the main body. Morrison device is capable of receiving a filter.

Pinion teaches that it is well known in the art to have a filter (15) located inside a main body (12) of a pipefitting (10).

It would be obvious to one having ordinary skill in the art at the time the invention was made to incorporate into the tee of Morrison, as modified by Carrow, a filter, as taught by Pinion, in order to filter the fluid that flows in the pipe system.

(10) Response to Argument

Arguments in view of Morrison as modified by Carrow

The applicant argues that the rejection in view of Morrison should be reversed because Morrison is not analogous art (Page 14 Line 13).

First, the applicant is reminded that arguments that a reference is non-analogous to or teaches away from the instant invention are not relevant to a rejection based upon anticipation.

Second claim 1 and 23 are directed to a tee. The fact that the tee is for use at the inlet or outlet of a septic tank is considered as the intended use of the tee. The

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applicant is reminded that the recitation with respect to the manner in which an apparatus is intended to be employed does not impose any structural limitation upon the claimed apparatus, which differentiates it from a prior art reference disclosing the structural limitations of the claim.

Therefore, the claims are directed to a tee and since Morrison discloses a tee, the reference is then considered as analogous art.

As to claim 15, the claim is directed to a one-piece sanitary tee baffle. A baffle is a device that regulates flow. Then, claim 15 is directed to a tee that regulates the flow in a sanitary environment. Morrison discloses a tee that “regulates” the flow used in a sanitary connection. Therefore, the reference is then considered as analogous art.

The applicant further argues that Morrison fails to disclose that the inlet/outlet hub has a diameter sized so as to receive a pipe of a first outer diameter and is adaptable to receive a pipe of a second outer diameter (Page 15 Line 6).

First, the claim language does not require that the first outer diameter is different from the second outer diameter.

If the applicant’s intention was to claim different outer diameters by using the words “first” and “second”, Morrison device is still capable of receiving two different outer diameter pipes.

The applicant is invited to check attachments #1 and #2. As seen in attachment #1, Morrison illustrates the inlet/outlet port. In attachment #2, Morrison illustrates that the inlet port is capable of receiving a pipe with a first and second outer diameters. By

using a reducer, Morrison inlet/outlet port is capable of receiving different diameters of pipes.

The applicant also argues that Morrison fails to disclose a reducer so as to suggest that Morrison is capable of receiving different diameters of pipes. The applicant cited that Morrison discloses a ring (a6) and that there is no teaching of a pipe received inwardly of the ring (Page 16 Line 3 and Page 17 Line 4).

The applicant is invited to check attachment #3. The examiner acknowledges that element a6 is a ring, however, the reducer is not element a6. As seen in the attachment, Morrison illustrates a reducer that allows a user to use a pipe having a smaller outer diameter. Therefore, Morrison clearly illustrates the use of a reducer.

Arguments in view of Ramm as modified by Carrow

The applicant argues that Ramm fails to disclose that the inlet/outlet port having a diameter sized so as to receive a pipe of a first outer diameter and being adaptable to receive a pipe of a second outer diameter (Page 17 Line 18).

The applicant is invited to check attachments #4 and #5. As seen in the attachments, Ramm illustrates that the inlet/outlet port is capable of receiving a pipe with a first and second outer diameters. By providing pipe seat having different diameter, Ramm device is capable of receiving different pipe sizes.

Arguments in view of Morrison as modified by Carrow and Wyre

The applicant argues that Morrison and Wyre are not analogous art and that there is no suggestion and/or motivation to combine the teachings of Wyre into the device described by Morrison (Page 19 Line 1).

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First, as stated before, Morrison is considered as analogous art. As to Wyre, Wyre discloses a pipe. Tees and pipes are considered within the art as analogous art. Therefore, Wyre also is considered as analogous art.

Second, the applicant is reminded that a conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill without any specific hint or suggestion in a particular reference.

Wyre is only used to demonstrate that the use of reinforcing ribs is well known in the art of pipe couplings in order to provide strength to the pipe structure.

Arguments in view of Ramm as modified by Carrow and Morrison

The applicant argues that because Morrison fails to disclose a reducer, the rejection should be reverse (Page 20 Line 1).

As seen in attachment #5, Ramm device is capable of receiving a pipe with a first and second outer diameters because of the steps presented in the port. Morrison illustrates the use of a reducer in a pipe coupling (see attachment #3). It would be obvious to one of ordinary skill in the art to provide Ramm's device with a reducer in order to adapt different pipes with different outer diameters, as seen in attachment #6.

Arguments with respect to the rejection of claims 16 and 20 in view of Morrison as modified by Carrow, Wyre and Pinion

The applicant argues that Pinion fails to teach an effluent filter (Page 21 Line 9 and Page 22 Line 13). Claims 16 and 20 only requires the use of a filter, not the combination of the filter with the septic process.

A filter is a porous article through which gas or liquid is passed to separate out matter in suspension. At the instant, Pinion "flat screen" serves as a filter. Therefore, Pinion clearly teaches that it is well known in the art to provide a filter in a pipe system.

Argument in view of the affidavits under 37 CFR § 1.132 filed on December 2, 2002, August 7, 2003 and March 25, 2005

The applicant argues that the rejection should be reverse based on evidence of commercial success because of the results of commercial success. The applicant further argues that the affidavits were not properly considered and that the examiner criticizes the affidavits for explaining how the sales of his product increase, why the sales increase and demonstrate his invention with respect to other devices that are in the market (Page 23 Line 9).

The applicant believes that the affidavits filed on December 2, 2002, August 7, 2003 and March 25, 2005, provide sufficient prove of the commercial success of the device.

First, the affidavits just show how were the sales of the device during a certain period of time.

The affidavits fail to establish a nexus or factually and legally sufficient connection between the evidence of commercial success and the claimed invention so that the evidence is of probative value in the determination of nonobviousness. Objective evidence of nonobviousness including commercial success must be commensurate in scope with the claims (MPEP § 716.03).

At the instant, the applicant only shows that in the field of septic tanks and other on-site waste disposal system, his device "may" have some commercial success.

However, the objective evidence of nonobviousness including commercial success must be commensurate in scope with the claims. At the instant, the claims are directed to a tee, not the combination of the tee with the septic tank or on-site waste disposal systems.

Further, the affidavits only show the sales of the device. The applicant is reminded that in ex parte proceedings before the Patent and Trademark Office, an applicant must show that the claimed features were responsible for the commercial success of an article if the evidence of nonobviousness is to be accorded substantial weight. (see *In re Huang*, 100 F.3d 135, 140, 40 USPQ2d 1685, 1690 (Fed. Cir. 1996)). Merely showing that there was commercial success of an article, which embodied the invention, is not sufficient. (*Ex parte Remark*, 15 USPQ2d 1498, 1502-02 (Bd. Pat. App. & Inter. 1990). Compare *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 7 USPQ2d 1222 (Fed. Cir. 1988)). At the instant, the affidavits have not show that the claimed features were responsible for the commercial success. Therefore, the affidavits are not persuasive.

(11) Related Proceeding(s) Appendix

A copy of the related proceedings appendix was not found in the current brief. It is assume that the appellant means to include the appendix with a statement of "NONE". Nevertheless, the applicant has provided a copy of the appendix and has been included in this response as attachment # 7.

Conclusion

For the above reasons, it is believed that the rejections should be sustained.

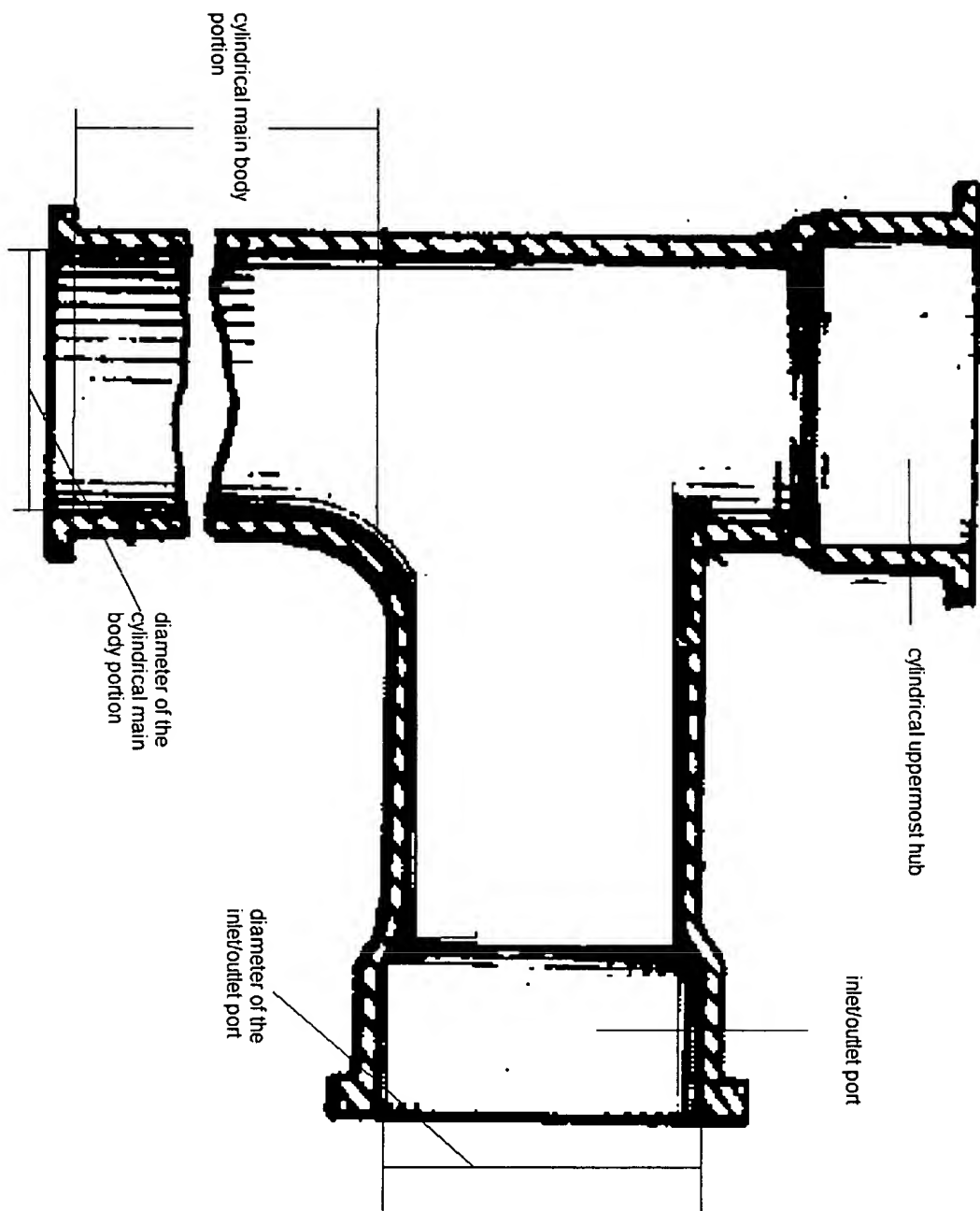
Respectfully submitted,

Carlos Lugo *C.L.*
Patent Examiner AU 3676

Conferees:
Daniel Stodola *DS*
Brian Glessner *B.G.*



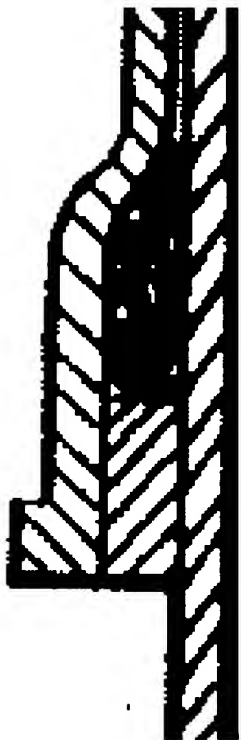
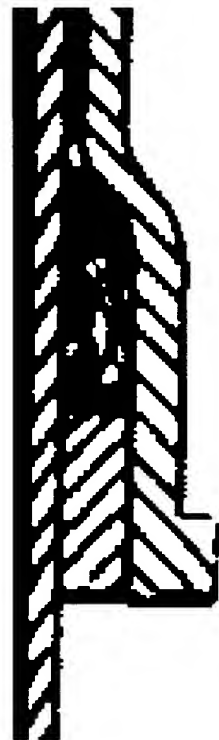
BRIAN E. GLESSNER
SUPERVISORY PATENT EXAMINER



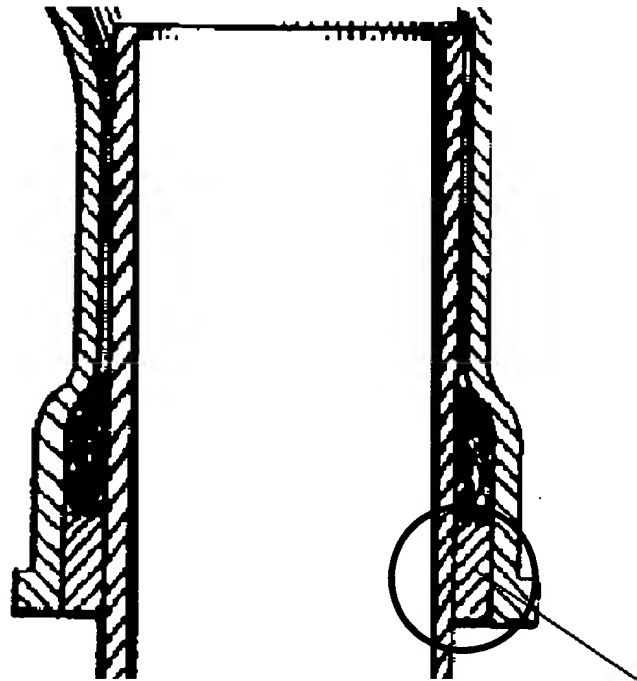
Attachment #1



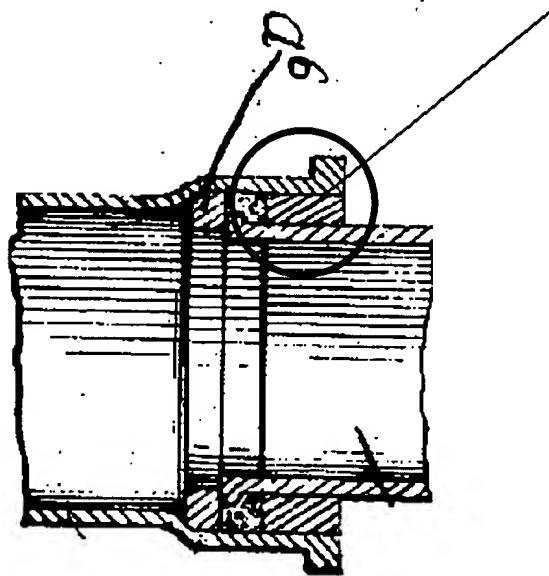
inlet/outlet port receiving a pipe
with a first outer diameter

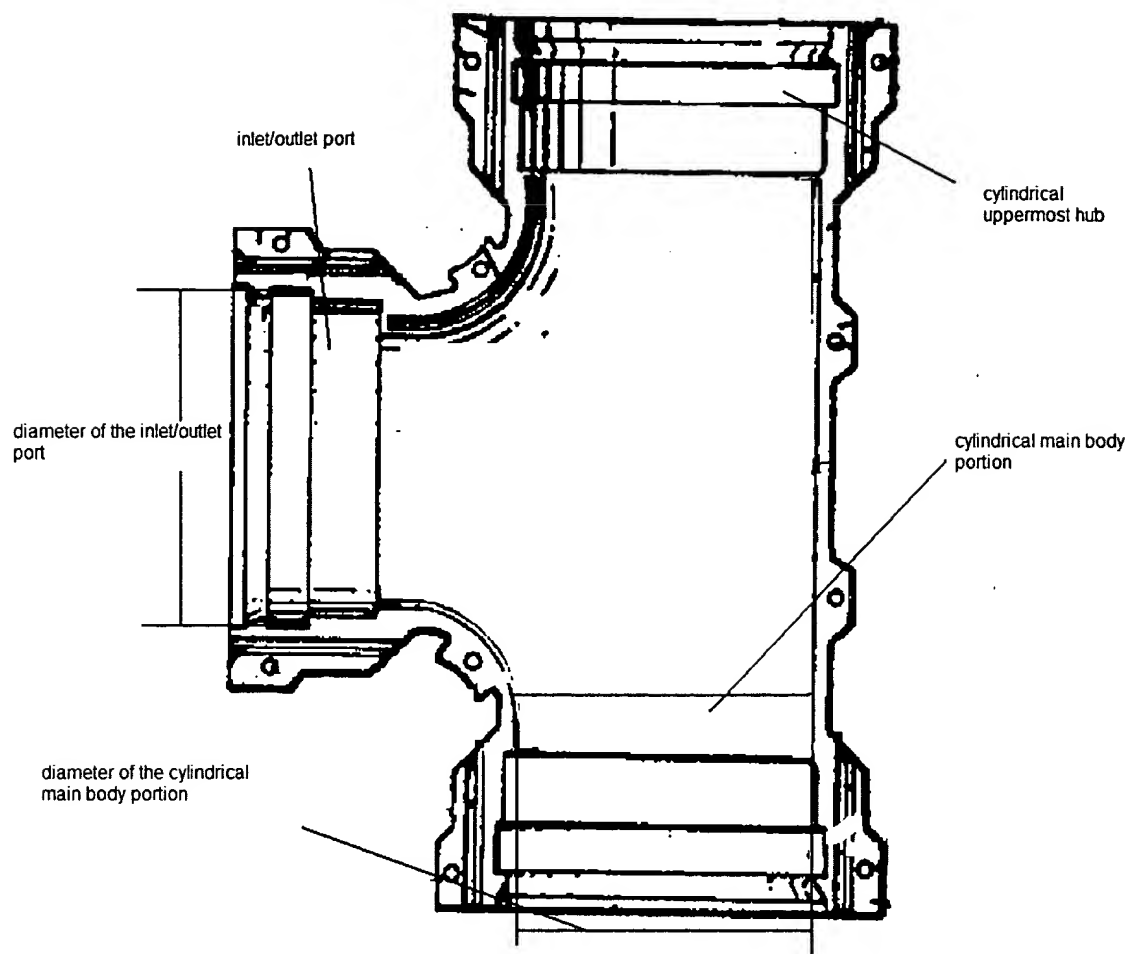


inlet/outlet port receiving a pipe with a
second outer diameter

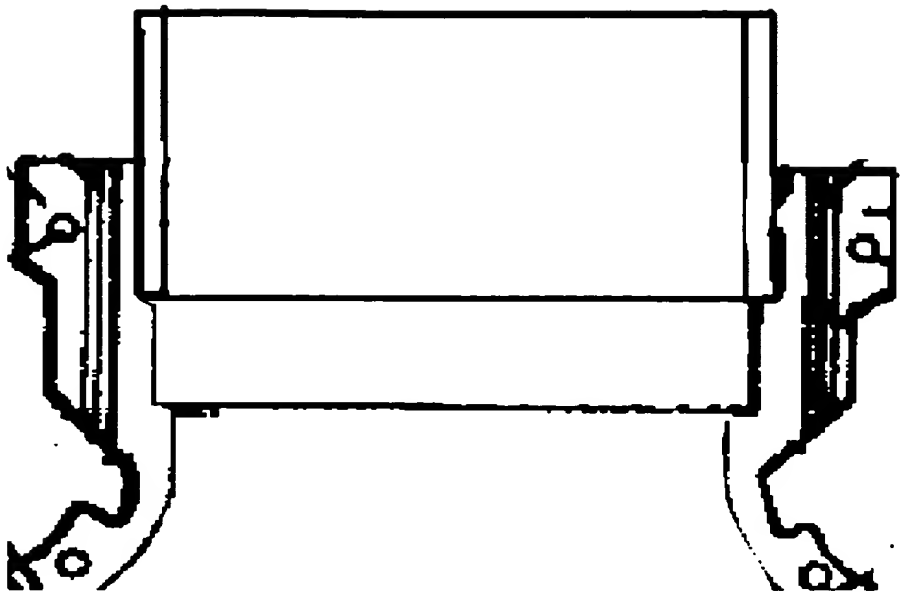


reducer

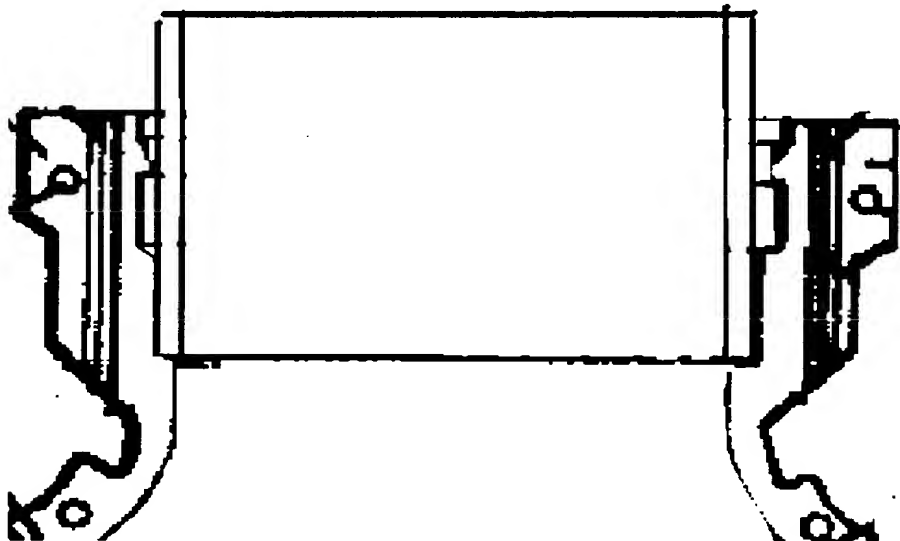




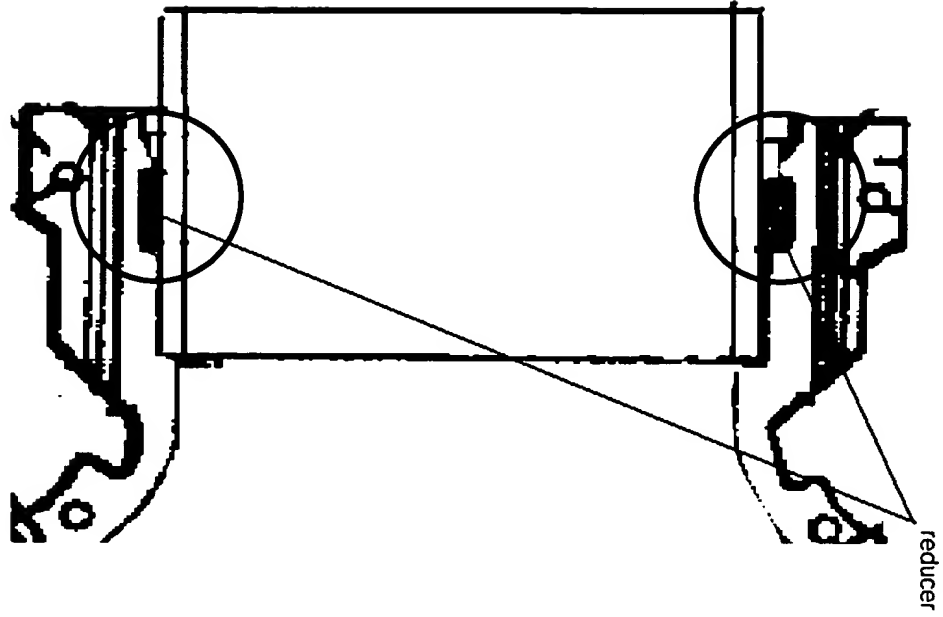
Attachment #4



inlet/outlet port receiving a pipe of a first
outer diameter



inlet/outlet receiving a pipe with a second
outer diameter



(M) RELATED PROCEEDINGS APPENDIX

None.

Attachment #7